

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 224 OF 2005

Mohammed Sabir Tufail Ahmed.

... Appellant.

Versus.

Bombay Municipal Corporation.

... Respondents.

Shri R.A.Thorat for the Appellant.

Ms.Geeta Joglekar for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 6th May, 2005.

P.C.:

1. After arguing the matter for sometime, Shri Thorat the learned Advocate appearing for the Appellant has tendered an Undertaking signed by the Appellant/ original Plaintiff. By the said Undertaking he has undertaken to withdraw unconditionally the suit filed in the trial Court as he wants to apply for regularisation. He submits that the a limited protection be granted to the Appellant till the application for regularisation is considered.

2. The learned Counsel appearing for the Respondents has opposed this submission. The learned Counsel pointed out that the Appellant has relied upon documents which are found to be fabricated and therefore, equitable relief should not be granted.

3. I have considered the submissions made by the

learned Counsel appearing for the parties. Even according to the Respondent-Corporation the suit structure was assessed in the year 1973. Thus the structure is in existence for last more than 30 years. The Appellant has undertaken to withdraw the suit. If the suit is withdrawn, naturally the order dated 24th February 1999 passed by the Additional Municipal Commissioner will stand confirmed.

4. Considering the fact that the structure is in existence for last more than 32 years and considering that the Appellant has offered to withdraw the suit unconditionally the limited protection is deserves to be granted.

5. Hence the following order is passed:

(i) The undertaking filed by the Appellant is taken on record on record and marked "X" for identification. The undertaking is accepted.

(ii) L.C.Suit No.2286 of 1999 is dismissed as withdrawn.

(iii) If the Appellant makes an application for regularisation to the Executive Engineer, Building Proposals (City) of the

Respondent-Corporation within a period of six weeks from today, the same shall be decided by the concerned Officer within a period of eight weeks from the date of receipt of the said application. The concerned officer will communicate the order passed within a period of one week from the date of passing of the order. If the Application for regularisation is made within a period of six weeks, for a period of 18 weeks from today, the Respondent-Corporation will not take action of demolition against the disputed structure. If the application for regularisation is not made within the stipulated period, the Respondent-Corporation is free to take action.

(iv) The Appeal is disposed of in above terms.

(v) The parties to act on authenticated copy of this order.

Judge.